

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DESTINEH G.

Claimant,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2011050200

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Chico, California, on July 27, 2011.

Stacy Ann Button, Social Worker with Butte County Children's Services, represented claimant. Leslie Feaster, claimant's Court Appointed Special Advocate (CASA) also attended the hearing on behalf of claimant.

Phyllis J. Raudman, Attorney at Law, represented the service agency, Far Northern Regional Center Regional Center (FNRC).

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq., (Lanterman Act) because she suffers from mental retardation or a disabling condition that is closely related to mental retardation or requires treatment similar to that required for individuals with mental retardation pursuant to Welfare and Institutions Code section 4512, subdivision (a), and California Code of Regulations, title 17, section 54000?

FACTUAL FINDINGS

1. Claimant is a 13-year-old girl who is a dependent of Butte County and is living in a group home. Her records state that she suffered prenatal exposure to methamphetamines and marijuana, and possibly, alcohol. At the age of 10 months she was placed with her adoptive family. Her behavior has been difficult and has included explosive episodes and other issues, which have resulted in voluntary placement in foster homes and group homes.

2. Claimant was referred to FNRC for an assessment to determine eligibility for services in January 2011. FNRC's Interdisciplinary Team reviewed assessments and determined claimant does not have mental retardation or another developmental disability and therefore is not eligible for services. On April 7, 2011, FNRC sent a Notice of Proposed Action to Ms. Button, claimant's social worker at Butte County Children's Services, informing her of its decision.

3. On May 2, 2011, Ms. Button filed a Fair Hearing Request on behalf of claimant, appealing FNRC's determination that claimant is not eligible for regional center services.

4. Under the Lanterman Act, FNRC accepts responsibility for providing services and supports for persons with developmental disabilities. A developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely, and that constitutes a substantial disability for the individual. Developmental disabilities include mental retardation, cerebral palsy, epilepsy, autism, and what is commonly known as the "fifth category" – a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a)).

5. Claimant contends that she is eligible for regional center services under the Lanterman Act either because she is an individual with mental retardation or she qualifies under the fifth category. She does not contend that she is eligible for regional center services under any other category of disability.

Psychological Assessments and Testimony

6. Jan Edward Freemon, Ph.D., serves on the eligibility committee at FNRC and testified at the hearing. Dr. Freemon is Staff Psychologist at FNRC, and has been licensed as a clinical psychologist since 1980. Although he has not personally evaluated claimant since 2003, he reviewed her records prior to his testimony at hearing.

Dr. Freemon found that claimant does not have a developmental disability. After reviewing her records, Dr. Freemon concluded that claimant has mental health issues. Claimant has been diagnosed with Reactive Attachment Disorder, Attention Deficit Hyperactivity Disorder (combined type), Intermittent Explosive Disorder, Conduct Disorder, and Oppositional Defiant Disorder.

Dr. Freemon reviewed claimant's Individualized Education Program (IEP), prepared by Butte County Special Education Local Plan Area and Paradise Unified School District, in which claimant was identified as qualifying for special education services as a student with Emotional Disturbance, and not mental retardation or a cognitive impairment. The supports and services offered by claimant's IEP are those appropriate for students with an emotional disturbance, such as counseling services from county mental health, and a behavior support plan.

Claimant has been hospitalized for psychiatric issues at Sutter Center for Psychiatry. Dr. Freemon noted that claimant's discharge summary from the August 2004 hospitalization lists "None" on the Axis II diagnoses, which is where it would have been documented if claimant had been diagnosed with a developmental disability.

Michael Clarke, Ph.D. completed a psychological evaluation of claimant in June 2009. His evaluation found claimant's IQ scores to be 64 verbal, 71 performance, with a full scale IQ of 65, which would place her within the mentally retarded range. However, Dr. Freemon believes that, due to claimant's mental health issues, the scores obtained by Dr. Clarke do not reflect claimant's actual IQ. Dr. Clarke noted in his assessment report that:

[Claimant] is on a host of psychotropic medication that may have resulted in a delayed response time to some of the items, thereby lowering her scores on some of the timed subtests; however, the overall scores between timed and untimed subtest did not differ.

On July 31, 2002, when claimant was four years nine months old, Dr. Freemon assessed her. At that time, claimant's IQ score was 92, placing her within the average range. Dr. Freemon opined that the more recent lower IQ scores obtained by Dr. Clarke may be lower due to claimant's substantial mental health issues and not a developmental disability. He opined that many factors, such as attention issues and psychiatric disorders, may contribute to individuals receiving lower IQ scores than their actual IQ, but it is generally believed that it is not possible for a person to obtain a higher IQ score than his or her actual IQ.

Dr. Freemon does not find claimant to be a person who would fall within the fifth category for regional center eligibility. The fifth category allows a person with a condition found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation to be eligible for regional center services. Claimant's primary needs are for mental health treatment, and not for treatment similar to that needed by a person with mental retardation.

7. Claimant did not offer any documentary evidence or call any experts or other witnesses who opined that claimant has a developmental disability that qualifies her for services from FNRC under the Lanterman Act.

LEGAL CONCLUSIONS

1. Claimant has the burden of proof in this matter.

2. As set forth in Finding 4, under the Lanterman Act, regional centers provide services and supports for persons with developmental disabilities, defined to include mental retardation, cerebral palsy, epilepsy, autism, and what is commonly known as the “fifth category” – a disabling condition found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals. (Welf. & Inst. Code, § 4512, subd. (a)).

Handicapping conditions that consist solely of psychiatric disorders, learning disabilities or physical conditions do not qualify as developmental disabilities under the Lanterman Act. (Cal. Code Regs., tit. 17, § 54000, subd. (c)).

3. Claimant asserted that she was eligible for services from FNRC under the Lanterman Act because she is either an individual with mental retardation or qualifies under the fifth category. Dr. Freemon, an expert in identifying developmental disabilities, found that, although claimant is a person with substantial challenges to overcome, she is not an individual with mental retardation, nor does she have a disabling condition that is closely related to mental retardation or requires treatment similar to that required for mentally retarded individuals. Claimant did not provide evidence or witnesses to refute the testimony of Dr. Freemon. Therefore, she failed to establish that she has a developmental disability. Consequently, she did not establish that she is eligible for services from FNRC under the Lanterman Act.

ORDER

Claimant’s appeal from FNRC’s decision that claimant is not eligible for regional center supports and services under the Lanterman Act is denied.

DATED: August 10, 2011

ELAINE H. TALLEY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)